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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 548 (JMF)

5 JOSHUA ADAM SCHULTE,

6 DEFENDANT.

7 -----x

8 June 13, 20022  
9 9:10 a.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13  
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the  
17 Southern District of New York

BY: DAVID DENTON

17 BY: MICHAEL LOCKARD

18 Assistant United States Attorneys

19 JOSHUA ADAM SCHULTE, Pro se

20 ALSO PRESENT: SABRINA SHROFF, Standby counsel for defendant  
21 DEBORAH COLSON, Standby counsel for defendant  
22 DAN HARTENSTINE, CISO  
23 MATT MULLERY, CISO  
24 DANIELLA MEDEL, CISO  
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1 (Case called)

2 THE COURT: Good morning. Welcome back.

3 So let's deal with what we need to deal with in closed  
4 session and most of the issues that we need to deal with I  
5 think we should deal with in open session when we go upstairs.

6 The main one I think we need to resolve or discuss is  
7 Mr. Schulte's filing on Friday concerning whether and to what  
8 extent the refined government theory or information still  
9 implicates the sort of public disclosure issues that we have  
10 been dealing with. I entered an order on Friday indicating  
11 that I agreed that as to Hickok, I think [REDACTED]

12 [REDACTED] [REDACTED] [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED] precisely the information that  
16 the government's claim was not previously disclosed, so it does  
17 seem to me that that sufficiently raises the public disclosure  
18 issue that if the government is relying on that, as an item of  
19 NDI, Mr. Schulte should be able to argue that issue to the  
20 jury. The others I think are a little less clear to me, so I  
21 wanted to just discuss them today.

22 Mr. Denton, anything you want to say on that?

23 MR. DENTON: No, your Honor. I think we understand  
24 the Court's position. I think our primary concern deals with  
25 how that might be used and also what is appropriate to instruct

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1 the jury on that question. I think that still does not avoid  
2 the legal issue that the Court has to resolve on that question.

3 THE COURT: OK. So; first, let's talk about the  
4 Hickok pages. I mean, I think the short answer is that to the  
5 extent that the government was moving under 6(a) to preclude  
6 Mr. Schulte from using those pages, I am denying that motion  
7 because I think that it does raise prior public disclosure  
8 issues. I have explained in my opinion why I thought that that  
9 was a valid argument, so given that, I think it is relevant and  
10 admissible but I think -- I guess correct me if I am wrong --  
11 the only argument under 6(c) that the government has made is,  
12 in essence, that they should be filed as classified exhibits.  
13 Is that correct?

14 MR. DENTON: That's correct, your Honor.

15 THE COURT: So focusing on the Hickok pages first,  
16 Mr. Schulte, anything you want to say on that front?

17 MR. SCHULTE: Regarding the 6(c), the government's  
18 motion to submit those classified exhibits?

19 THE COURT: Yes.

20 MR. SCHULTE: Yes. I think the issue, we have kind of  
21 litigated it before but I wouldn't be in substantially the same  
22 position if I have to -- we have to close the courtroom and all  
23 of these Courts are basically instructing the jury that this is  
24 sensitive information, that this is NDI. And the difficulty  
25 then in trying to show the jury that this is public information



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1 is really undermined by this silent witness rule or whatever  
2 other courtroom closures. I think to the degree the government  
3 thinks whatever information in this is still classified or NDI,  
4 that they should submit for redactions or substitutions of that  
5 information. But, overall, I just won't be in substantially  
6 the same position without being able to basically show publicly  
7 that this is the information that's been disclosed. And then I  
8 also raise that DevLAN is no longer being used. A lot of these  
9 issues with this information, DevLAN in particular, I don't  
10 think the government has shown that there is an extenuating  
11 issue to national security or national defense in showing files  
12 from the Internet to the jury.

13 THE COURT: OK. And Mr. Denton, let's say I agree  
14 with Mr. Schulte in that these pages I agree should be or can't  
15 be filed as classified exhibits consistent with CIPA. What's  
16 your response then?

17 MR. DENTON: Well, so I think, your Honor, two things.  
18 First of all, the Court's ruling would have to be on some other  
19 basis. Section 8 sets out clearly the authority to file them  
20 as classified exhibits, essentially regardless. I think it  
21 would really be a function of the Court ruling on some other  
22 basis that they could not be admitted in that way. Contrary to  
23 Mr. Schulte's representation, the government has submitted,  
24 ex parte, a significant discussion of the harm that would come  
25 from public disclosure of this. I think if the Court were to



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1 rule that these have to be shown publicly, I think we would  
2 have a more serious discussion about whether the government  
3 might seek some other relief.

4 THE COURT: OK. And I'm not sure I posed this  
5 specific question but to the extent that you are relying on  
6 Section 8, I mean, how do you square that with Section 6(c),  
7 which is to say that if the government could always insist on  
8 filing an exhibit in classified form, obviously I assume you  
9 would agree that there is a limit to that authority, namely  
10 public trial guaranteeing the Sixth Amendment, but how do you  
11 square that authority under Section 8 with 6(c), which requires  
12 the government to redact or provide a substitute or essentially  
13 not rely on it on pain of dismissal in the most extreme  
14 circumstances?

15 MR. DENTON: I think, your Honor, they work together  
16 in a couple of different ways. I think, first of all, the  
17 substitution process works when -- essentially, a good example  
18 here is the discussion we have had about the Foreign Office  
19 West; the fact of a foreign office is relevant. The specifics  
20 of where it is is not relevant to anything. And so in those  
21 circumstances you sort of harmonize the relevance ruling under  
22 6(a) with the protection of classified information under 6(c),  
23 section 8 provides a mechanism I think for circumstances in  
24 which the Section 6 process sort of doesn't cover it or doesn't  
25 address it or a substitution is inadequate but the information

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1 still remains extraordinarily sensitive, that essentially it  
2 prevents a defendant from forcing the declassification of  
3 information in a circumstance where it's both necessary and  
4 admissible but also still remains sensitive.

5 So, I think they work in tandem in that way.

6 THE COURT: OK. And the Bartender and [REDACTED]  
7 issues, anything you want to say in on that score? I think  
8 that would be something that might benefit from discussion. It  
9 is not clear to me there is prior public disclosure here, but  
10 your thoughts on that.

11 MR. DENTON: We do not believe there is, your Honor.  
12 I think with respect to Bartender in particular, we intend to  
13 elicit the fact that Bartender was -- the tool Bartender was  
14 described in the leak and to elicit from witnesses why the  
15 additional disclosures of the defendant -- that the defendant  
16 attempted to make in his notebooks were uniquely harmful. So I  
17 don't think there is any particular reason why these documents  
18 would be necessary. They also don't discuss that particular  
19 disclosure, the association of that tool with the

20 [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED]

23 Similarly, with respect to the [REDACTED], that is  
24 just; not kind of a match for what the defendant is charged  
25 with having attempted to disclose about various tradecraft



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1 techniques. And, moreover, his personal involvement in that  
2 which is an additional layer not discussed anywhere in the  
3 leaks.

4 So I think we agree with the Court's analysis on those  
5 two points.

6 THE COURT: OK.

7 Mr. Schulte?

8 MR. SCHULTE: So the Bartender issue I want to raise  
9 that in the CIPA 10 the government also raises or discusses  
10 specifics about Bartender, [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED]  
12 [REDACTED] [REDACTED]  
13 [REDACTED]  
14 [REDACTED] So  
15 to the degree that the government's CIPA 10 is noticing that in  
16 the charges against me, it is talking specifically about  
17 Bartender and how it is used [REDACTED]. That information  
18 is definitely relevant useful because it cites that information  
19 directly on these pages.

20 As far as the other information, the government is  
21 saying, well, we would stipulate that Bartender was disclosed  
22 but that this specific information was not. So you know, that,  
23 again, that really doesn't put me in the same position because  
24 I would like to show the jury specifically what information was  
25 disclosed about Bartender and then the government is going to

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1 have their argument as to what they claim is not disclosed, and  
2 my argument is going to be for the jury to determine, based on  
3 the disclosure already from Bartender, is this not inferred or  
4 is this information the government intends to or claims is  
5 still NDI or classified, is it so generic enough that this  
6 specific type of information render this information no longer  
7 not on the same scale or the same magnitude of the information  
8 that's been released. So, it is very important to show the  
9 jury what has already been released and then have the jury make  
10 that determination as to whether they believe the additional  
11 information the government claims was attempted to be disclosed  
12 is a part of that information or generic enough that it doesn't  
13 really matter because so much of Bartender has already been  
14 disclosed.

15 Basically it is a comparison that the jury should make  
16 and I think the Court should allow the jury to make that.

17 And then, as for [REDACTED], I agree that the  
18 [REDACTED] is not -- the few examples that I have, though,  
19 they're very small examples. So all I am trying to show is  
20 that the [REDACTED] that the government is mentioning in the  
21 Hour of the Mind is very generic. All it says is [REDACTED]  
22 [REDACTED] and it doesn't go into specifics as to something  
23 that could provide a vendor or someone to recognize CIA tools.  
24 So these small examples here are basically showing more  
25 specific examples about [REDACTED] and how, for example



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1 here, [REDACTED]

2 [REDACTED]

3 [REDACTED] So these types of information

4 is a lot more specific as to [REDACTED] So what

5 I would like to show the jury is the difference between writing

6 something generically, such as saying, oh, [REDACTED] or

7 using some kind of generic thing in such a way that no one

8 would be able to use that information to identify any CIA tool,

9 and compare and contrast that with other information that

10 Wikileaks has released that show very specific types of

11 [REDACTED] and how that information is used.

12 Overall, Judge, I just don't think that the very small

13 types of information that I would like pulled from Wikileaks

14 here is not something that, you know, can't easily be, if there

15 is anything the government claims to be classified or whatever,

16 that stuff can be simply redacted or substituted and these

17 basic examples, easily, can be shown to the jury.

18 THE COURT: All right. So the government's motion is

19 granted as to the [REDACTED] pages under 6(a), and I don't

20 see how this constitutes prior public disclosure and the

21 grounds that Mr. Schulte just proposed for it is actually not

22 even that argumentative than one, namely comparing and

23 contrasting what he said with more specific references to

24 [REDACTED] and WikiLeaks and prior submissions to me he has

25 noted that the [REDACTED] is something that is discussed in

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1 unclassified documents. He is certainly free to make that  
2 argument and make the argument generally that what was  
3 disclosed is not specific enough to constitute National Defense  
4 Information, but he doesn't need these pages to make that  
5 argument. So the government's motion under 6(a) is granted  
6 with respect to that on the grounds that it is not relevant and  
7 admissible.

8 On the Bartender pages I guess, Mr. Denton, my  
9 inclination would be to do the following but I want to see if  
10 this would pose logistical or procedural problem; would be to  
11 preliminarily deny it but subject to reconsideration when you  
12 elicit the testimony that you have described, if Mr. Schulte is  
13 able to point to things in these pages that constitute prior  
14 disclosures of what you say your witnesses will testify to is  
15 not disclosed.

16 MR. DENTON: So can I just have one second, your  
17 Honor?

18 THE COURT: Sure.

19 (pause)

20 THE COURT: Yes, Mr. Denton?

21 MR. DENTON: So, your Honor, I think that approach  
22 makes sense in the first instance, I just want to add kind of  
23 another step that may be appropriate.

24 There is certainly going to be testimony about the  
25 components of what the defendant wrote about who used



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1 Bartender, what it was for, things you like that; they're part  
2 of his writings. It may be appropriate at some point, either  
3 then or as part of the Court's jury instructions, to instruct  
4 the jury on what specifically is the NDI that is at issue and  
5 that may serve to sort of narrow this and avoid the need for  
6 further documents just by clarifying that that testimony is  
7 there is explanation and not necessarily part of the NDI that  
8 is charged here.

9 THE COURT: I agree with that. I think to the extent  
10 that the government has narrowed its theory and approach on  
11 Counts Three and Four it does make sense to ensure that the  
12 jury understands what is the NDI -- alleged NDI at issue so I  
13 agree and we should talk about that in advance of what it would  
14 be appropriate for me to explain that to the jury.

15 So that, I think, is where I will leave Bartender,  
16 which is to say that on its face I'm not persuaded that the  
17 pages that Mr. Schulte has pointed to constitute prior  
18 disclosures but I will revisit that after the government has  
19 elicited the testimony that Mr. Denton has described, and if  
20 Mr. Schulte at that point is able to point to something that  
21 actually does match, if you will, what the government is  
22 alleging to be NDI then I may revisit it and we will deal with  
23 it then.

24 That leaves only the Hickok page and, Mr. Denton, I  
25 want to think about it for a moment but I want to understand

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1 the potential implications if I were to say that Mr. Schulte  
2 has to be able to use this as an unclassified exhibit, what  
3 that means. When you say consider other remedies, does that  
4 mean you would seek mandamus? Because that would obviously  
5 implicate our proceeding to trial.

6 MR. DENTON: Your Honor, I hesitate to say this but I  
7 think that if not mandamus, an interlocutory appeal as of right  
8 under Section 7.

9 THE COURT: Fair enough.

10 MR. DENTON: [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 THE COURT: Hold on. I want to make sure we are all  
17 on the same page here. What I understood Mr. Schulte to be  
18 seeking to do at this point would be [REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 MR. DENTON: So I think that was -- we had not



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1 necessarily understood that, your Honor. [REDACTED]

2 [REDACTED]

3 [REDACTED] [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED] Obviously the

5 sort of conclusion of the section 6 process is that following

6 the Court's rulings, the government sort of consults with the

7 relevant powers that be and up the ladder makes the decision

8 about whether the Court -- whether the government is going to

9 agree to the use of the information in the form the Court has

10 approved, or take some other position and invite the Court to

11 ruling accordingly. I think it is the Court's position that

12 [REDACTED] [REDACTED]

13 [REDACTED] That's a meaningfully

14 different version of that discussion [REDACTED]

15 [REDACTED].

16 THE COURT: OK. Mr. Schulte, maybe I misunderstood

17 what you were asking to do but [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED]

21 MR. SCHULTE: So first, Judge, I just wanted to make

22 sure it is on the record that the ex parte document the

23 government delivered to the Court we haven't received, so if we

24 could receive that document we may be able to further alleviate

25 whatever the government's concerns are.

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1 THE COURT: That request is denied.

2 MR. SCHULTE: OK.

3 As far as this document, I was mainly just -- the  
4 Court asked regarding relevance for 6(a) so I was basically  
5 stating how these documents are relevant. As to only the  
6 specific portions, I agree that only the specific portions that  
7 are needed are what I would seek to discuss but as far as these  
8 are the only ones, I didn't do -- I did basically a review of  
9 my cursory examination of the things I thought were most  
10 particular and relevant but I haven't actually gone through all  
11 of these two or three documents to check every single place so  
12 I just, you know, I think if the Court is going to rule on 6(c)  
13 I just ask for the opportunity to at least be able to check --  
14 go through and check documents to see if there is anything else  
15 that may or may not be relevant because that wasn't what I was  
16 intending here.

17 THE COURT: Well, that's what I directed you to do  
18 here, so.

19 MR. SCHULTE: It was about relevance so I thought it  
20 was just 6(a). So I was trying to show the Court why these  
21 documents are relevant but I wasn't specifically stating  
22 these --

23 THE COURT: Mr. Schulte, I am quite confident that I  
24 directed you to make a filing that specifically referenced  
25 where in the leaked information you believe there was any



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1 relevant prior disclosure. So I understood that that -- in  
2 other words, I have given you that opportunity. This was your  
3 submission on that and I'm not going to give you another chance  
4 to go comb through this and see if there are other areas where  
5 you can point to something. That's what you were directed to  
6 do.

7 All right.

8 MR. DENTON: If I may, your Honor?

9 THE COURT: Yes.

10 MR. DENTON: I say this without having consulted with  
11 people, but I would also think it would be possible in this  
12 circumstance that we might be able to alleviate some of the  
13 security concerns by stipulating essentially that pages from  
14 WikiLeaks stated X, or included this diagram, or something to  
15 that effect [REDACTED]

16 [REDACTED] also included specific language and  
17 identifies it as having been publicly disclosed as part of  
18 Vault 7. So I wanted to flag for the Court that to the extent  
19 that I think we see where the Court is going with this, that  
20 that's an option that I expect we would discuss seriously.

21 THE COURT: OK. So how do you propose that we leave  
22 this since I don't know -- I don't anticipate we will be  
23 opening today but I presume this is an issue that both sides  
24 would want to have an understanding of where it stands before  
25 you open.

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1 MR. DENTON: Well, so your Honor, I think there is two  
2 kind of nested questions. The first one, which is not  
3 something that we have addressed here today but is still out  
4 there is the admission of Government Exhibit 1 at large. I  
5 think if we resolve that, then I think --

6 THE COURT: Let me interrupt you. I was planning to  
7 say this on the record in the public session and I will repeat  
8 it there: That motion is granted.

9 MR. DENTON: OK.

10 THE COURT: The Government Exhibit 1 and whatever  
11 number exhibit [REDACTED] is, those two exhibits I'm going to  
12 allow to be filed in classified form. I will actually file an  
13 opinion explaining that reasoning, but that is the bottom line  
14 ruling and you are now aware of that.

15 What is nested issue 2?

16 MR. DENTON: So then nested issue 2 is the documents  
17 that are within Government Exhibit 1, which is what we are  
18 talking about here, I think the answer is the Court needs to  
19 rule on the public disclosure issue in a way that then it sort  
20 of puts the ball back in the government's court to address  
21 that. I think our position is that it is appropriately handled  
22 as a classified exhibit without prejudice to the defendant for  
23 all of the reasons discussed in the second Rosen opinion. It  
24 seems like we are now talking about a very limited amount of  
25 stuff. If the Court disagree with that, we will certainly work



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1 as quickly as possible to reach a resolution, or at least tell  
2 the Court whether this is something we expect to resolve in an  
3 evidentiary form or whether there is some other relief we would  
4 seek. I think we can do that very quickly.

5 But, I think that's the order of operations here.

6 THE COURT: OK. Well, I want to think about it a  
7 little bit but I think my current inclination, sort of the  
8 direction I am headed and I think it is probably right, is that  
9 the my current inclination is Mr. Schulte should be permitted  
10 to use these pages -- and by these pages I want to be clear, [REDACTED]

11 [REDACTED] [REDACTED] [REDACTED]

12 [REDACTED] [REDACTED] [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED] I will exclude that on the  
17 grounds that it is not relevant and/or is cumulative. But,  
18 bottom line is those [REDACTED] pages or portions thereof, to be more  
19 precise, I do think that he can and should be allowed to use in  
20 some form. My current inclination is that there is a  
21 meaningful difference between the government submitting --  
22 filing the entirety of Government Exhibit 1 in classified form  
23 and requiring Mr. Schulte to rely on this in classified form,  
24 and in that sense my current inclination is to say that he  
25 needs to be able to use it in an unclassified form. What form

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1 that takes is a different story and really, under CIPA, I think  
2 it is the government's motion to make motion under 6(c) for  
3 stipulation or redaction, not my burden to propose it to you.

4 So I am giving you the benefit of telling you where I  
5 think I am headed. If you want to make a motion under 6(c) for  
6 redaction and/or stipulation that would be an adequate  
7 substitute then that may suffice and alleviate the issues for  
8 your purposes, but I think the burden is really yours to make  
9 that application.

10 MR. DENTON: Yes, your Honor. Understood. I think  
11 the main thing that we would just need to address is making  
12 sure that we tried up some of the substitutions that have been  
13 approved across all of the various documents. So, for example,  
14 [REDACTED] has been substituted across all of the documents. We would  
15 not want a disclosure of these documents in a way that  
16 essentially unmask other things that have been substituted in  
17 any number of other places by providing an easy reference. So,  
18 message received that this takes some work on the part the  
19 government here. As time permits today and this afternoon, we  
20 will do that as efficiently as we possibly can.

21 THE COURT: OK. So I guess that means we will need to  
22 revisit this, presumably that means in classified session  
23 either at the end of today or the beginning of tomorrow but we  
24 will see how far we get and we will take it as it comes.

25 Other things that we should discuss here? One is



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1 witness names or names that may come up at trial. The defense  
2 submitted one name that I understand is classified. I  
3 understand that the government's list also included names that  
4 are technically classified but my understanding had been that  
5 there was no issue with putting them on a list and providing it  
6 to the jury and reading it to the jury with the understanding  
7 that they would be mixed in with other names so I don't know if  
8 the defense name raises unique issues or it is just because it  
9 was provided as a single name but before I added it to our list  
10 I wanted to make sure that I was aware of whatever the issues  
11 are.

12 MR. DENTON: So your Honor, I'm not sure what the  
13 defense name is.

14 THE COURT: [REDACTED]

15 MR. DENTON: I think, your Honor, it probably falls in  
16 the same category as everyone else in that there is not an  
17 issue with including them on the list. It is, again, our very  
18 sincere request that the entire list of names not be read out  
19 loud, that the jury be allowed to examine it and make an  
20 announcement about whether they recognize anyone on it. I will  
21 also note that that list includes the universe of people that  
22 the defendant has subpoenaed. Where we ended on Friday was  
23 that the defendant had cut down, significantly, the list of  
24 people from the group of 12 the government had identified as  
25 particularly sensitive or difficult to move and Ms. Shroff

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1 represented that the defendant was going to be making efforts  
2 to cut the larger group down to a more reasonable number,  
3 hopefully by today. In an abundance of caution we have  
4 included everybody on there. We don't see a need to read to  
5 the jury dozens of names of CIA officers who are not going to  
6 play a part in this trial.

7 So, again, we have got them on the list but I don't  
8 know that we necessarily need all of them.

9 THE COURT: The problem is that we are picking a jury  
10 in about a half an hour so I need to have a list and for it to  
11 be finalized. What do you want me to do with that?

12 MR. DENTON: Well, I think, your Honor, the defendant  
13 give us a more reasonable list of his witnesses. We can turn  
14 around a revised version for the Court basically immediately.  
15 I don't think that's an issue but I think this is sort of the  
16 defendant's doing here by continuing to push the question of  
17 his witness list further and further down the road.

18 THE COURT: OK. Are there any witnesses names that  
19 can be eliminated from this list?

20 MR. DENTON: I think the version that we provided the  
21 Court on Friday eliminated the names that we had already  
22 discussed that have already been eliminated but we don't know  
23 where the defendant is on his group of forty-some-odd that  
24 remain outstanding.

25 THE COURT: And [REDACTED]



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1 MR. DENTON: Again, I think there is no issue adding  
2 it to the extent that is necessary, your Honor.

3 THE COURT: OK.

4 Mr. Schulte, where do we stand on witnesses,  
5 generally?

6 MR. SCHULTE: So we did -- we cut down the list  
7 significantly. I don't know if the government has received the  
8 updated list but I think one of the issues, though --

9 THE COURT: I think the answer to that is they  
10 haven't, so.

11 MR. SCHULTE: I think one of the issues is these names  
12 may come into play on cross or direct so a lot of these names  
13 have significant dealings with these situations, so our  
14 position is that the people who are relevant and who are  
15 involved in these issues should still be read to the jury to  
16 see if they know those people. So that's the defense's  
17 position.

18 THE COURT: And then there was another name that the  
19 defense gave which was simply Paula. I'm not going to ask the  
20 jury if they know Paula. I mean that makes no sense.

21 MR. SCHULTE: She has been subpoenaed, she is on the  
22 list; Paula [REDACTED] I thought she should already be on there  
23 but if that's not, that's her name, Paula [REDACTED].

24 THE COURT: Is she covert or is her name classified?

25 MR. SCHULTE: She is retired, she is overt.

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1 THE COURT: Mr. Denton, do you know?

2 MR. DENTON: I think that's right, your Honor.

3 THE COURT: OK. Well, I'm just going to go with the  
4 whole list since -- and I will not read it out loud but I will  
5 give the jury a few minutes to read through it. I will add  
6 [REDACTED] name and add Paula [REDACTED] name and leave it  
7 there.

8 So I don't know if the order has hit the docket or if  
9 Mr. Schulte has it but just so you know, 7I have resolved the  
10 other remaining CIPA issues as the only outstanding ones were  
11 in relation to the May 23rd Section 5 notice. Bottom line is I  
12 think in all respects I have granted the government's  
13 applications under that and either stricken the notice or ruled  
14 the evidence inadmissible under 6(a) so I don't think there is  
15 any further discussion required there and that is a public  
16 order that, again, may or may not have hit the docket but it  
17 will, you will see it soon if you haven't already.

18 Anything we need to discuss on the Michael memorandum?  
19 I think you guys were trying to work out some sort of proposed  
20 stipulation there.

21 MR. DENTON: So I think, your Honor, that is probably  
22 the one exhibit that we are going to still need a little time  
23 to sort out. We are working on it. We have got sort of some  
24 stipulation language that we are going back and forth with the  
25 equity holders on but I think we will have something in the



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1 next day or two by the time it is relevant.

2 THE COURT: OK. But that one we have a little time.  
3 Is that your view?

4 MR. DENTON: Certainly from our perspective. We  
5 wouldn't expect it to come up with the first few witnesses in  
6 the government's case, your Honor.

7 THE COURT: Mr. Schulte, is that OK with you?

8 MR. SCHULTE: Yes. That's fine.

9 THE COURT: Any remaining issues on the defense  
10 contact with its witness list? My understanding is, and I  
11 don't know if this information was conveyed to you yet, that  
12 Michael has declined the request to be interviewed by the  
13 defense. I think there were three others that remained  
14 somewhat open. I don't know where those stand or if we want to  
15 go through them quickly or if we can do that in discrete  
16 fashion that the government can remain for.

17 Mr. Schulte? And, to be clear, my understanding is  
18 Michael declined this morning so I think that's new  
19 information.

20 MR. SCHULTE: OK. Is there update -- so I haven't  
21 received the updated list. Counsel said they received an  
22 update late Friday but I wasn't -- I don't know what the  
23 updates are so I'm not sure what the --

24 THE COURT: OK. I would like to get upstairs so I  
25 guess Mr. Denton, Mr. Lockard, do you mind stepping out for one

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1 second so we can talk more openly about what the updates are,  
2 if any, and then I will have you back and we can go upstairs.

3 (Pages 25-27 EX PARTE FOR DEFENDANT ONLY by order of  
4 the Court)

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1 THE COURT: You don't need to get cozy because my only  
2 question is if there is anything else that we need to discuss  
3 here.

4 MR. DENTON: Just one final observation with respect  
5 to the witnesses, your Honor.

6 There is a limited subset of the people whom the  
7 defendant has subpoenaed who are covert who are getting names  
8 for trial. We will update the key that will be available for  
9 the witnesses and the defendant that has all of that on it.  
10 The vast majority of7 everybody else falls into the sort of  
11 second category in the witness protections in that they would  
12 be referred to by their first name only, so we just wanted to  
13 emphasize that that's where we expect everybody in the  
14 courtroom should be as far as referring to these people during  
15 the course of the trial.

16 THE COURT: OK. That doesn't have any bearing on the  
17 list for the jury though, correct?

18 MR. DENTON: No, your Honor.

19 THE COURT: OK. That's fine.

20 And I remind you that I gather in the first trial it  
21 was the witnesses who caused the most problem by not  
22 necessarily following or abiding by the substitutions and  
23 limitations that we all were -- or you all were supposed to be  
24 laboring under, so it is your burden to make sure your  
25 witnesses are aware of the name situation and abide by those

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1 limitations.

2 MR. DENTON: Yes, your Honor.

3 I think, just to be clear, there was one witness who  
4 did that during the last trial. I think, by and large, a lot  
5 of the other issues we had to address came up during  
6 questioning but, either way, we have made sure all of our  
7 witnesses know. To the extent that the defense calls witnesses  
8 we will find an appropriate way to make sure that they are also  
9 aware of those limitations.

10 THE COURT: Mr. Schulte, anything else we need to do  
11 down here?

12 MR. SCHULTE: No.

13 THE COURT: So then we are adjourned and I will see  
14 you upstairs in a few minutes in Courtroom 23A.

15 Thank you.

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